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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR CELIS,

Defendant and Appellant.

B301850

Los Angeles County

Super. Ct. No. PA039478

APPEAL from an order of the Superior Court of Los Angeles County, Cynthia L. Ulfig, Judge. Affirmed.

Jonathan E. Demson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Attorney General, Idan Ivri and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Senate Bill No. 1437 (2017-2018 Reg. Sess.) (SB 1437), effective January 1, 2019, amended the felony-murder rule and eliminated the natural and probable consequences doctrine as it relates to murder. Under Penal Code section 1170.95,¹ a person who was convicted under theories of felony murder or murder under the natural and probable consequences doctrine, and who could not be convicted of murder following the enactment of SB 1437, may petition the sentencing court to vacate the conviction and resentence on any remaining counts.

A jury convicted defendant and appellant Victor Celis of second degree murder. (§ 187, subd. (a).) In 2019, Celis filed a petition for resentencing under section 1170.95 in the trial court. The court denied the motion, concluding SB 1437 and section 1170.95 are unconstitutional. Celis appeals the court's order, arguing the court erred in concluding SB 1437 and section 1170.95 are unconstitutional. Although we agree SB 1437 and section 1170.95 are constitutional, we conclude Celis is ineligible for relief as a matter of law. We therefore affirm the denial of his petition.

PROCEDURAL BACKGROUND

In 2002, the Los Angeles County District Attorney filed an information charging Celis with murder (§ 187, subd. (a)) and various gun use and gang allegations. A jury convicted him of

¹ All undesignated statutory references are to the Penal Code.

second degree murder and found a principal personally and intentionally discharged a firearm (§ 12022.53, subds. (c), (d), & (e)(1)), a principal personally used a firearm (§ 12022.53, subds. (b) & (e)(1)), and the murder was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)). The trial court sentenced him to 25 years to life in state prison.

In 2019, Celis filed a petition for resentencing under section 1170.95. In the petition, Celis checked the boxes indicating an information was filed against him that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine; at trial, he was convicted of first or second degree murder under the felony-murder rule or the natural and probable consequences doctrine; and he could not now be convicted of first or second degree murder because of the changes in homicide law. Celis requested that counsel be appointed on his behalf. As noted above, the trial court denied the petition on the ground that SB 1437 and section 1170.95 are unconstitutional.

Celis timely appealed.

FACTUAL BACKGROUND²

“After leaving Kennedy High School, on September 13, 2001, Carlos Salinas, Nicole Pena, Ricky Lloyd, and Frank Menendez were walking down the street. Lloyd and Menendez walked into a parking lot, and Pena and Salinas continued walking to a Taco Bell Restaurant. When Salinas saw a red car

² The following statement of facts is taken from our opinion in case number B162968, filed April 12, 2004, resolving Celis’s direct appeal.

drive up, he felt 'like something would happen' and just kept on walking. Salinas then heard the passenger say, 'his hood's Pacoima' and 'Fuck San Fernando[,] and Menendez say, 'Santos.' The passenger then got out of the red car with a weapon that looked like a rifle, loaded it, and started shooting. Lloyd and Menendez ran, but when Lloyd tried to climb a wall, he slipped and the shooter shot him. It appeared the shooter reloaded his weapon, aimed the rifle at Lloyd's head, and fired again. The shooter kicked Lloyd and said 'Pacoima' and then got into the car and left. Salinas identified [Celis] as the driver of the car. Lloyd died from a single gunshot wound to the head.

"Just before the shooter got back into the car, the driver said something like, 'Hurry Up.' Salinas did not remember exactly what was said, but understood the words to mean, 'Let's get out of here.' After the shooter got back into the car, the car drove off. Salinas estimated that this all happened within a short period of time, less than a minute.

"Several other people witnessed the shooting and their testimony relative to the event was in essence the same. Jimmy Lopez testified before the shooting, the red car made a U-turn and stopped. After the passenger shot Lloyd twice, the car 'came around' and stopped, and the driver said, 'Hurry up, let's go.' The shooter ran, hopped a wall and then kicked the victim twice. After that, the shooter got into the car and the car drove away.

"Noel Crabbe testified she saw someone get out of the red car with a gun in his hand, chase the victim, and fire shots. After the victim jumped over the wall, the shooter shot the victim in the head and kicked his face. The driver of the car yelled out of the window, 'Let's roll, let's roll' and drove the car from the driveway area into the middle of the street so the shooter could

‘run across and get in.’ The shooter threw the gun into the front seat of the car because the window was down and then he jumped in the backseat and the car drove off.

“Frank Menendez testified he had been walking with Lloyd before the shooting. After the shooting, he saw the driver and the passenger flash a gang sign with their hands, ‘throwing a “P” for Pacoima. The driver put his hand on top of the roof of the car. Menendez admitted he had not previously stated the driver ‘threw any sign.’

“The day before the shooting, Linda Espinoza met [Celis]. She had seen him before that date and knew people called him ‘Wicked.’ Espinoza went with [Celis] to his house and saw some gang writing on the wall of his bedroom. She saw ‘Pacoima’ on the wall and ‘Pacas Trece.’ There are Pacoima gang members at her school and she understood the writing to indicate a Pacoima gang. Appellant said he was from ‘Pacas Trece’ and threw a gang sign with his hands. He said he did not get along with ‘San Fernando,’ a different gang and that ‘one day he was going to . . . end up getting them.’ He told Espinoza that he was an ‘associate of Pacas Trece.’

“Espinoza knew Lloyd and said he was not in a gang but only ‘associated with a gang,’ meaning he talked to them. Lloyd’s nickname was ‘Little Ricky’ and he associated with San Fernando Gang.

“Based on items found in [Celis’s] bedroom, it was the opinion of Los Angeles Police Officer Francisco Alferez that appellant was a member of the Pacoima Crazy Boys, a category of the Pacoima Trece Street Gang. They are involved in robberies, murder, drive-by shootings, assault with deadly weapons, grand theft auto, battery, graffiti, narcotics sales, extortion and witness

intimidation. In Officer Alferez’s opinion, the murder of Lloyd was committed for the benefit of the Pacoima Crazy Boys gang because it increased the respect and reputation of the gang and the fear other gangs would have.” (*People v. Celis* (Apr. 12, 2004, B162968) [nonpub. opn.].)

DISCUSSION

Celis Is Ineligible for Section 1170.95 Relief

A. Governing Principles

1. SB 1437’s Limitation of Accomplice Liability for Murder

The legislature enacted SB 1437 “to amend the felony-murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.” (Stats. 2018, ch. 1015, § 1, subd. (f).) SB 1437 amended section 189 to provide that a participant in qualifying felonies during which death occurs generally will not be liable for murder unless the person was (1) “the actual killer,” (2) a direct aider and abettor in first degree murder, or (3) “a major participant in the underlying felony [who] acted with reckless indifference to human life[.]” (§ 189, subd. (e).)³

³ This limitation does not apply “when the victim is a peace officer who was killed while in the course of the peace officer’s

SB 1437 also “added a crucial limitation to section 188’s definition of malice for purposes of the crime of murder.” (*People v. Verdugo* (2020) 44 Cal.App.5th 320, 326, review granted, S260493, Mar. 18, 2020 (*Verdugo*)). Under new section 188, subdivision (a)(3), “[m]alice shall not be imputed to a person based solely on his or her participation in a crime.” [Citations.]” (*People v. Lewis* (2020) 43 Cal.App.5th 1128, 1135 (*Lewis*), rev. granted, S260598, Mar. 18, 2020.)⁴ “As a result, the natural and probable consequences doctrine can no longer be used to support a murder conviction. [Citations.]” (*Ibid.*)

2. Petitions to Vacate Prior Convictions

SB 1437 also added section 1170.95 to the Penal Code. This section permits individuals who were convicted of felony murder

duties, where the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of the peace officer’s duties.” (§ 189, subd. (f).)

4 The review order in *People v. Lewis* states: “The issues to be briefed and argued are limited to the following: (1) May superior courts consider the record of conviction in determining whether a defendant has made a prima facie showing of eligibility for relief under Penal Code section 1170.95? (2) When does the right to appointed counsel arise under Penal Code section 1170.95, subdivision (c).” (*Lewis, supra*, Supreme Court Mins. Mar. 18, 2020.) The review order in *Verdugo* states: “Further action in this matter is deferred pending consideration and disposition of a related issue in *People v. Lewis*, S260598 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the court.” (*Verdugo*, S260493, Supreme Court Mins., Mar. 18, 2020.)

or murder under a natural and probable consequences theory, but who could not be convicted of murder following SB 1437's changes to sections 188 and 189, to petition the sentencing court to vacate the conviction and resentence on any remaining counts.

(§ 1170.95, subd. (a).) A petition for relief under section 1170.95 must include: "(A) A declaration by the petitioner that he or she is eligible for relief under this section, based on all the requirements of subdivision (a). [¶] (B) The superior court case number and year of the petitioner's conviction. [¶] (C) Whether the petitioner requests the appointment of counsel." (§ 1170.95, subd. (b)(1).) If any of the information is missing "and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information." (§ 1170.95, subd. (b)(2).)

If the petition contains the required information, section 1170.95, subdivision (c), prescribes "a two-step process" for the court to determine if it should issue an order to show cause. (*Verdugo, supra*, 44 Cal.App.5th at p. 327.) First, the court must "review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section." (§ 1170.95, subd. (c).) If the petitioner has made this initial prima facie showing, and has requested that counsel be appointed, he or she is then entitled to appointed counsel. (*Ibid.*; *Lewis, supra*, 43 Cal.App.5th at p. 1140 ["trial court's duty to appoint counsel does not arise unless and until the court makes the threshold determination that petitioner 'falls within the provisions' of the statute."].) The court then reviews the petition a second time. If, in light of the parties' briefing, it concludes the petitioner has made a prima facie showing that he

or she is entitled to relief, it must issue an order to show cause. (§ 1170.95, subd. (c); *Verdugo, supra*, 44 Cal.App.5th at p. 328.)

“Once the order to show cause issues, the court must hold a hearing to determine whether to vacate the murder conviction and to recall the sentence and resentence the petitioner on any remaining counts.” (*Verdugo, supra*, 44 Cal.App.5th at p. 327, citing § 1170.95, subd. (d)(1).) At the hearing, the parties may rely on the record of conviction or present “new or additional evidence” to support their positions. (§ 1170.95, subd. (d)(3).)

B. Although SB 1437 and section 1170.95 are constitutional, Celis is ineligible for relief as a matter of law

Celis argues the trial court erred in concluding SB 1437 and section 1170.95 is unconstitutional. The Attorney General agrees SB 1437 and section 1170.95 are constitutional, but argues the trial court’s order denying Celis’s petition should be affirmed because Celis, who was not convicted under a felony-murder or natural and probable consequences theory of liability, is ineligible for relief as a matter of law.

We agree with the parties that section 1170.95 is constitutional. (See *People v. Lamoureux* (2019) 42 Cal.App.5th 241, 246, 251-267; *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 275, 279-289.)

Although SB 1437 and section 1170.95 are constitutional, the record contains no indication the jury was instructed on a felony-murder or natural and probable consequences theory of liability. Rather, the record indicates Celis was prosecuted and convicted under the theory that he was a direct aider and abettor.

We therefore conclude Celis is ineligible for relief as a matter of law. (See § 1170.95, subd. (a) [only individuals convicted under felony-murder or natural and probable consequences theory are eligible for relief].)⁵ We affirm the trial court's denial of Celis's petition. (See *People v. Smithey* (1999) 20 Cal.4th 936, 972 [a legally correct ruling will not be disturbed on appeal merely because the trial court's stated reason was legally incorrect].)

⁵ We note that on appeal, Celis does not contend he was convicted under a felony-murder or natural and probable consequences theory, nor does he argue he is eligible for section 1170.95 relief.

DISPOSITION

The order denying Celis's petition under section 1170.95 is affirmed.

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CURREY, J.

We concur:

WILLHITE, Acting P.J.

COLLINS, J.